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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of CARMEN JULIA and
ABEL MORALES.

CARMEN JULIA ROMERO,

Appellant,

v.

ABEL MORALES,

Respondent.

D053196

(Super. Ct. No. DN139447)

APPEAL from an order of the Superior Court of San Diego County, Eugenia
Eyherabide, Judge. Affirmed.

Abel Morales appeals from an order of the trial court denying his request to obtain clarification of the disposition of two parcels of real property that were the subject of a 2006 default judgment of dissolution of Morales's marriage to Carmen Julia Romero. We conclude that the trial court properly concluded that it did not have jurisdiction to grant the relief requested by Morales, and accordingly we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

A judgment of dissolution of Morales and Romero's marriage was entered in March 2006. The judgment was entered by default because Morales did not appear. Among other things, the judgment addressed the disposition of two lots of real property in La Paz, Mexico (the La Paz lots). The judgment awarded one lot to Morales and one lot to Romero, without any way to distinguish between the two lots. Specifically, the judgment stated: "To [Morales]: One property lot located in La Paz, Mexico, worth approx. 15,000 [*sic*]. [¶] Assets to [Romero]: One property lot located in La Paz, Mexico, wo[r]th approx. 15,000.00 [*sic*]."

In February 2008, Morales filed an application for an order to show cause, which sought, among other things, an order from the court dividing the La Paz lots, presumably so that it would be clear which lot was awarded to which party. The application stated, "The court should identify and divide the La Paz lots." In connection with this request, Romero also asked the court to "[v]acate the default . . . to do equity between the parties"1

Romero opposed the request to set aside the default and the request to identify and divide the La Paz lots. She stated, "In response to the lots in La Paz, they have already been addressed and ordered in the judgment."

1 Morales's application for an order to show cause also sought relief concerning custody, child support, visitation and division of retirement accounts. None of those issues are raised in this appeal.

The trial court denied the request to vacate the default judgment and to identify and divide the La Paz lots. The minute order stated, "There is no basis to set aside the Judgment pursuant to statute of limitations. [Morales]'s motion is denied. The parties are to meet and confer to attempt to divide the lots in Mexico." At the hearing on the order to show cause, the trial court explained that it was denying the request to vacate the default judgment and to identify and divide the La Paz lots because "there's no authority to go behind the judgment. That was the judgment that's been entered. There's been no basis that has been stated at all. In fact, this judgment was entered in '06. All the statute of limitations for [Code of Civil Procedure section] 473² or [Family Code section] 2122³ have passed. [¶] So there's no basis upon which this court would set aside a default, which is, in essence, what you're asking me to do by changing what that judgment was. . . . [¶] So I'm denying your request for saying who gets those lots now." The trial court concluded: "It's way beyond the statute. I don't have any jurisdiction."

Morales appeals from the trial court's decision that it lacked jurisdiction to identify and divide the La Paz lots. Romero has not filed a respondent's brief.

² The trial court was apparently referring to Code of Civil Procedure section 473, subdivision (b), which provides a procedural basis for obtaining relief from a default judgment in that it allows a court to relieve a party from a judgment taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect.

³ Family Code section 2122 sets forth the time limits from bringing a motion to set aside a judgment. The statute specifies the time limits applicable to motions alleging actual fraud, perjury, duress, mental incapacity, mistake of law or fact, or failure to comply with disclosure requirements. Here, the ground of mistake of law or fact appears to apply.

II

DISCUSSION

On appeal, Morales does not challenge the trial court's decision that it lacked jurisdiction under Code of Civil Procedure section 473, subdivision (b) and Family Code section 2122 to vacate the default judgment.⁴ Instead, Morales argues that Family Code section 2556 provides the trial court with jurisdiction in this instance to identify and divide the La Paz lots.

Family Code section 2556 states:

"In a proceeding for dissolution of marriage . . . , the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability."

Morales argues that because the judgment in this case did not identify which lot was to be awarded to which party, and did not specify how the lots were to be transferred, the division of the La Paz lots "cannot be enforced" and thus "the lots remain effectively undivided." Morales argues that because the La Paz lots are effectively undivided, the

⁴ Family Code section 2122, subdivision (e) sets forth a one-year limitations period for challenging uncontested judgments on the basis of mistake. Code of Civil Procedure section 473, subdivision (b) sets forth a six-month limitations period for seeking relief from a default judgment on the grounds of mistake, inadvertence, surprise or excusable neglect. Here, Morales sought relief more than two years after entry of the default judgment of dissolution.

trial court has continuing jurisdiction under Family Code section 2556 to accomplish an equal division.

We disagree. Family Code section 2556 applies when a community asset "ha[s] not been previously adjudicated by a judgment in the proceeding." Here, it is clear that the disposition of the La Paz lots was previously adjudicated. Thus, Family Code section 2556 does not apply. The crux of Morales's argument is that the disposition of the La Paz lots was in practical effect not adjudicated because the parties are not able to ascertain which lot belongs to which party. However, Family Code section 2556 does not allow for continuing jurisdiction when the parties are not satisfied with the *clarity* of a judgment concerning the division of a community asset or liability. Instead, it applies only when that asset or liability has not been addressed *at all*. (See Fam. Code, § 2556 [referring to an asset or liability that is "omitted or unadjudicated"].) As Morales has identified no basis on which the court would have jurisdiction to amend the judgment of dissolution, we affirm the trial court's order denying the relief sought by Morales.

However, for the benefit of the parties in further proceedings, we note that Code of Civil Procedure section 473, subdivision (d) appears to be applicable here, although Morales did not bring a motion under that provision.⁵ Under Code of Civil Procedure section 473, subdivision (d), "[t]he court may, . . . on motion of either party after notice to the other party, set aside any void judgment or order." (*Ibid.*) A judgment may be set

⁵ Code of Civil Procedure section 473, subdivision (d) deals with motions to set aside a void judgment. Morales did not seek to set aside the default judgment on the ground that it was void.

aside as void "'at any time after its entry, by the court which rendered the judgment or made the order.'" (*Reid v. Balter* (1993) 14 Cal.App.4th 1186, 1194, italics added; see also *Heidary v. Yadollahi* (2002) 99 Cal.App.4th 857, 862 [the court has authority to set aside a void judgment "at any time"]; *Plotitsa v. Superior Court* (1983) 140 Cal.App.3d 755, 761 ["a default that is void on the face of the record when entered is subject to challenge at any time irrespective of lack of diligence in seeking to set it aside"].) With respect to a judgment describing the disposition of real property, "[a] purported description in a judgment affecting real property which is no description at all renders the judgment void." (*City of Redlands v. Nickerson* (1961) 188 Cal.App.2d 118, 122.) "[A] judgment involving the right to possession of real property must sufficiently describe it to enable an officer charged with the duties of executing a writ of possession to go upon the ground, and, without exercising judicial functions, ascertain the locality of the lines as fixed by the judgment.'" (*People v. Rio Nido Co., Inc.* (1938) 29 Cal.App.2d 486, 490.)

Relying on Code of Civil Procedure section 473, subdivision (d), Morales may elect to file a noticed motion in the trial court to set aside the judgment as void to the extent that it does not adequately describe the La Paz lots.⁶ If he is successful in setting aside the judgment, Morales may then attempt to obtain the entry of an amended judgment that more specifically describes the disposition of the real property at issue.

⁶ We note that under Family Code section 2125, "[w]hen ruling on [a] motion to set aside a judgment, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief."

DISPOSITION

The order is affirmed.

IRION, J.

WE CONCUR:

O'ROURKE, Acting P. J.

AARON, J.